FAX

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SUBJECT Appeal Brief (10/006,059)

Number of Pages 36

Date 10/26/2005

MESSAGE

This fax communication contains:

1. one copy of a Fax Transmittal Form;
2. two copies of a Fee Transmittal Letter, including fee; and
3. three copies of the Appeal Brief.

Volel

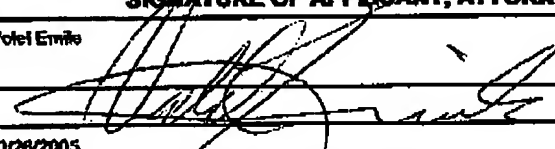| **TRANSMITTAL FORM** *(to be used for all correspondence after initial filing)*		Application Number	10/006,059
		Filing Date	12/06/2001
		First Named Inventor	Dwip N. Banerjee
		Art Unit	2151
		Examiner Name	Nghi V. Tran
Total Number of Pages in This Submission		Attorney Docket Number	AUS920010871US1

ENCLOSURES   (Check all that apply)

☑ Fee Transmittal Form	☐ Drawing(s)		☐ After Allowance communication to Technology Center (TC)
☑ Fee Attached	☐ Licensing-related Papers		☐ Appeal Communication to Board of Appeals and Interferences
☐ Amendment/Reply	☐ Petition		☑ Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
☐ After Final	☐ Petition to Convert to a Provisional Application		☐ Proprietary Information
☐ Affidavits/declaration(s)	☐ Power of Attorney, Revocation Change of Correspondence Address		☐ Status Letter
☐ Extension of Time Request	☐ Terminal Disclaimer		☐ Other Enclosure(s) (please identify below):
☐ Express Abandonment Request	☐ Request for Refund		
☐ Information Disclosure Statement	☐ CD, Number of CD(s) _____		
☐ Certified Copy of Priority Document(s)	**Remarks** Appeal Brief.		
☐ Response to Missing Parts/ Incomplete Application			
☐ Response to Missing Parts under 37 CFR 1.52 or 1.53			

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Volel Emile
Signature	*[signature]*
Date	10/26/2005

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Volel Emile		
Signature	*[signature]*	Date	10/26/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. 10/006,059
Appeal Brief dated 10/26/2005
Reply to Office Action of 06/07/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: :
   Banerjee et al.   :
                            :
                            : Before the Examiner:
Serial No: 10/006,059   :   Nghi V. Tran
                            :
Filed: 12/06/2001   : Group Art Unit: 2151
                            :
Title: APPARATUS AND METHOD   : Confirmation No.: 8983
OF USING XML DOCUMENTS TO   :
PERFORM NETWORK PROTOCOL   :
SIMULATION   :

TRANSMITTAL OF APPELLANTS' BRIEF UNDER 37 C.F.R. 1.192(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attached is Appellant's Brief, in triplicate, from a decision of the Examiner dated **06/07/2005**, finally rejecting the claims in the Application.

The item(s) marked below are appropriate:

1. _____ A petition and fee for extension of term for reply to the final rejection is attached.

2. __X__ Appeal fee

    __X__ other than a small entity.   Fee: $500.00

3. __X__ Payment

    __X__ Please charge Deposit Account **09-0447** the sum of $500.00. A duplicate of this notice is attached.

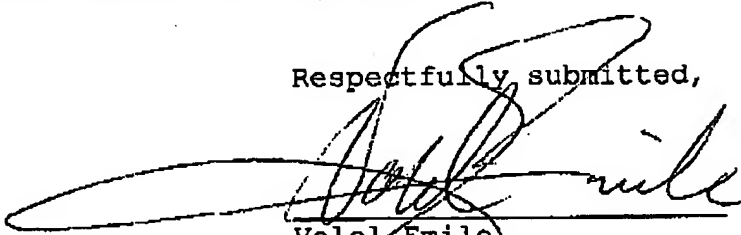AUS920010871US1

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The Commissioner is hereby authorized to charge any
additional fee, which may be required or credit any
overpayment to Deposit Account No. **09-0447**.

Respectfully submitted,

Volel Emile
Attorney for Applicants
Registration No. 39,969
(512) 306-7969

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APPELLANTS' BRIEF UNDER 37 C.F.R. 1.192

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

    This is an appeal to a final rejection dated June 07, 2005 of claims 1 - 20 of Application Serial Number 10/006,059 filed on December 06, 2001. This Appeal Brief is submitted pursuant to a Notice of Appeal filed on August 29, 2005 in accordance with 37 C.F.R. 1.192.

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Appl. No. 10/006,059
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<u>BRIEF FOR APPLICANTS - APPELLANTS</u>

(1)

<u>Real Party in Interest</u>

The real party in interest is International Business Machines Corporation (IBM), the assignee.

(2)

<u>Related Appeals and Interferences</u>

There are no other appeals or interferences known to appellants, appellants' representative or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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<u>Status of Claims</u>

Claims 1 - 20 have been finally rejected in an Office Action dated June 07, 2005.

(4)

<u>Status of Amendment</u>

All amendments have been entered.

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<u>Summary of the Invention</u>

The present invention provides a method of using an eXtensible Markup Language (XML) document to perform network protocol simulation. In accordance with the teachings of the invention, network protocol data packets are used to generate an XML document. Then, changes are

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made in the document to perform network protocol simulation
(see page 27, line 19 to page 28, line 4).

(6)

Issues

**Whether Claims 1 - 20 were properly rejected under 35
U.S.C. §102(e) as being anticipated by Lienhard et al.**

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The rejected claims stand or fall together.

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Argument

In considering a Section 102 rejection, all the
elements of the claimed invention must be disclosed in a
single item of prior art in the form literally defined in
the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756
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Lienhard et al. purport to teach an information
technology system for the definition, optimization and
control of processes. According to Lienhard et al., the
disclosure describes an information technology system to
control processes consisting of sequences of discrete
events, whereby a process model corresponds to a real
process or reflects the real process. The process model
and the real process are coupled to each other via an
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interface. Thus, direct data exchange between the process
model and the real process occurs through the interface
preferably using XML documents. Although, the process
model is coupled to the real process, it can be independent
of the real process. This allows the system to perform
simulation of process modifications and/or optimization of
the process without interruption of the real process. In
such a case, process modification in the process model can
be checked without interrupting the real process and if the
modification was found to be successful, it can be
integrated in whole or in part in the real process by way
of the interface.

Thus, Lienhard et al. purport to teach process
simulation using XML documents which is quite different
from *performing **network protocol** simulation using **XML
documents*** as claimed in the present Application.

As already explained in the Specification as well as
in the Response to the first Office Action, the XML
language allows designers to create their own customized
tags, enabling definition, transmission, validation, and
interpretation of data between applications and between
organizations. Thus, if network communications protocol
connection establishment between two computer systems on a
network, transition state of each user data packet and
network communications protocol close connection procedures
are known, an XML document may be generated to represent
the communications protocol data transactions between the
two systems. Varying any element or data in the generated
document is in effect modifying the network communications
protocol data. Hence the present invention provides an
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easy and efficient way of simulating network communications protocol.

In any case, since Lienhard et al. do not teach, show or suggest the steps of *changing a part of an XML document that has been generated using network protocol data packets to perform network protocol simulation* as claimed, Applicants submit that the claims in the Application are allowable. Hence, Applicants respectfully request allowance and passage to issue of the claims in the application.

Respectfully submitted,

By: _____
Volel Emile
Attorney for Applicants
Registration No. 39,969
(512) 306-7969

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Appl. No. 10/006,059
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APPENDIX

1. (Previously presented) A method of performing network
    protocol simulation using an eXtensible Markup
    Language (XML) document, the XML document representing
    network communication exchanges, the network protocol
    simulation including changes made in the XML document
    to effect changes in the network communication
    exchanges, the method comprising the steps of:

    generating an XML document using network protocol data
    packets; and

    changing a part of the XML document to perform the
    network protocol simulation.

2. (Original) The method of Claim 1 wherein the step of
    changing a part of the XML document includes the step
    of changing design characteristics of the network
    protocol to effect the XML document generation
    process.

3. (Original) The method of Claim 2 wherein the resultant
    XML document is used as a simulation aid.

4. (Original) The method of Claim 3 wherein the XML
    document is validated using a schema.

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5.   (Original) The method of Claim 4 wherein new data packets are used to change the XML document.

6.   (Previously presented) A computer program product on a computer readable medium for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer program product comprising:

code means for generating an XML document using network protocol data packets; and

code means for changing a part of the XML document to perform the network protocol simulation.

7.   (Original) The computer program product of Claim 6 wherein the code means for changing a part of the XML document includes code means for changing design characteristics of the network protocol to effect the XML document generation process.

8.   (Original) The computer program product of Claim 7 wherein the resultant XML document is used as a simulation aid.

9.   (Original) The computer program product of Claim 8 wherein the XML document is validated using a schema.

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10. (Original) The computer program product of Claim 9
     wherein new data packets are used to change the XML
     document.

11. (Previously presented) An apparatus for performing
     network protocol simulation using an eXtensible Markup
     Language (XML) document, the XML document representing
     network communication exchanges, the network protocol
     simulation including changes made in the XML document
     to effect changes in the network communication
     exchanges, the apparatus comprising:

     means for generating an XML document using network
     protocol data packets; and

     means for changing a part of the XML document to
     perform the network protocol simulation.

12. (Original) The apparatus of Claim 11 wherein the means
     for changing a part of the XML document includes means
     for changing design characteristics of the network
     protocol to effect the XML document generation
     process.

13. (Original) The apparatus of Claim 12 wherein the
     resultant XML document is used as a simulation aid.

14. (Original) The apparatus of Claim 13 wherein the XML
     document is validated using a schema.

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Appl. No. 10/006,059
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15.   (Original) The apparatus of Claim 14 wherein new data packets are used to change the XML document.

16.   (Previously presented) A computer system for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer system comprising:

at least one memory device for storing code data; and

at least one processor for processing the code data to generate an XML document using network protocol data packets, and to change a part of the XML document to perform the network protocol simulation.

17.   (Original) The computer system of Claim 16 wherein the processor further processes the code data to change design characteristics of the network protocol to effect the XML document generation process.

18.   (Original) The computer system of Claim 17 wherein the resultant XML document is used as a simulation aid.

19.   (Original) The computer system of Claim 18 wherein the XML document is validated using a schema.

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20. (Original) The computer system of Claim 19 wherein new
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: :
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made in the document to perform network protocol simulation
(see page 27, line 19 to page 28, line 4).

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**Whether Claims 1 - 20 were properly rejected under 35
U.S.C. §102(e) as being anticipated by Lienhard et al.**

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the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756
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<div align="center">APPENDIX</div>

1.   (Previously presented) A method of performing network
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     simulation including changes made in the XML document
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     changing a part of the XML document to perform the
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2.   (Original) The method of Claim 1 wherein the step of
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<div align="center">Page 6 of 10</div>

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      perform the network protocol simulation.

7.   (Original) The computer program product of Claim 6
      wherein the code means for changing a part of the XML
      document includes code means for changing design
      characteristics of the network protocol to effect the
      XML document generation process.

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USPQ 577 (Fed. Cir. 1984).

Lienhard et al. purport to teach an information
technology system for the definition, optimization and
control of processes. According to Lienhard et al., the
disclosure describes an information technology system to
control processes consisting of sequences of discrete
events, whereby a process model corresponds to a real
process or reflects the real process. The process model
and the real process are coupled to each other via an
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interface. Thus, direct data exchange between the process
model and the real process occurs through the interface
preferably using XML documents. Although, the process
model is coupled to the real process, it can be independent
of the real process. This allows the system to perform
simulation of process modifications and/or optimization of
the process without interruption of the real process. In
such a case, process modification in the process model can
be checked without interrupting the real process and if the
modification was found to be successful, it can be
integrated in whole or in part in the real process by way
of the interface.

Thus, Lienhard et al. purport to teach process
simulation using XML documents which is quite different
from **performing network protocol simulation using XML
documents** as claimed in the present Application.

As already explained in the Specification as well as
in the Response to the first Office Action, the XML
language allows designers to create their own customized
tags, enabling definition, transmission, validation, and
interpretation of data between applications and between
organizations. Thus, if network communications protocol
connection establishment between two computer systems on a
network, transition state of each user data packet and
network communications protocol close connection procedures
are known, an XML document may be generated to represent
the communications protocol data transactions between the
two systems. Varying any element or data in the generated
document is in effect modifying the network communications
protocol data. Hence the present invention provides an

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easy and efficient way of simulating network communications protocol.

In any case, since Lienhard et al. do not teach, show or suggest the steps of _changing a part of an XML document that has been generated using network protocol data packets to perform network protocol simulation_ as claimed, Applicants submit that the claims in the Application are allowable. Hence, Applicants respectfully request allowance and passage to issue of the claims in the application.

Respectfully submitted,

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APPENDIX

1.   (Previously presented) A method of performing network
      protocol simulation using an eXtensible Markup
      Language (XML) document, the XML document representing
      network communication exchanges, the network protocol
      simulation including changes made in the XML document
      to effect changes in the network communication
      exchanges, the method comprising the steps of:

      generating an XML document using network protocol data
      packets; and

      changing a part of the XML document to perform the
      network protocol simulation.

2.   (Original) The method of Claim 1 wherein the step of
      changing a part of the XML document includes the step
      of changing design characteristics of the network
      protocol to effect the XML document generation
      process.

3.   (Original) The method of Claim 2 wherein the resultant
      XML document is used as a simulation aid.

4.   (Original) The method of Claim 3 wherein the XML
      document is validated using a schema.

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5.   (Original) The method of Claim 4 wherein new data
        packets are used to change the XML document.

6.   (Previously presented) A computer program product on a
        computer readable medium for performing network
        protocol simulation using an eXtensible Markup
        Language (XML) document, the XML document representing
        network communication exchanges, the network protocol
        simulation including changes made in the XML document
        to effect changes in the network communication
        exchanges, the computer program product comprising:

        code means for generating an XML document using
        network protocol data packets; and

        code means for changing a part of the XML document to
        perform the network protocol simulation.

7.   (Original) The computer program product of Claim 6
        wherein the code means for changing a part of the XML
        document includes code means for changing design
        characteristics of the network protocol to effect the
        XML document generation process.

8.   (Original) The computer program product of Claim 7
        wherein the resultant XML document is used as a
        simulation aid.

9.   (Original) The computer program product of Claim 8
        wherein the XML document is validated using a schema.
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10.   (Original) The computer program product of Claim 9
        wherein new data packets are used to change the XML
        document.

11.   (Previously presented) An apparatus for performing
        network protocol simulation using an eXtensible Markup
        Language (XML) document, the XML document representing
        network communication exchanges, the network protocol
        simulation including changes made in the XML document
        to effect changes in the network communication
        exchanges, the apparatus comprising:

        means for generating an XML document using network
        protocol data packets; and

        means for changing a part of the XML document to
        perform the network protocol simulation.

12.   (Original) The apparatus of Claim 11 wherein the means
        for changing a part of the XML document includes means
        for changing design characteristics of the network
        protocol to effect the XML document generation
        process.

13.   (Original) The apparatus of Claim 12 wherein the
        resultant XML document is used as a simulation aid.

14.   (Original) The apparatus of Claim 13 wherein the XML
        document is validated using a schema.

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15. (Original) The apparatus of Claim 14 wherein new data
packets are used to change the XML document.

16. (Previously presented) A computer system for
performing network protocol simulation using an
eXtensible Markup Language (XML) document, the XML
document representing network communication exchanges,
the network protocol simulation including changes made
in the XML document to effect changes in the network
communication exchanges, the computer system
comprising:

at least one memory device for storing code data; and

at least one processor for processing the code data to
generate an XML document using network protocol data
packets, and to change a part of the XML document to
perform the network protocol simulation.

17. (Original) The computer system of Claim 16 wherein the
processor further processes the code data to change
design characteristics of the network protocol to
effect the XML document generation process.

18. (Original) The computer system of Claim 17 wherein the
resultant XML document is used as a simulation aid.

19. (Original) The computer system of Claim 18 wherein the
XML document is validated using a schema.

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20. (Original) The computer system of Claim 19 wherein new
data packets are used to change the XML document.

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